MIKE & SANDRA SPRUNGER

IBLA 90-525 Decided July 10, 1992

Appeal from a decision of the Utah State Office, Bureau of Land Management, declaring lode mining claims U MC 329599 through U MC 329601 null and void ab initio.

Affirmed.

1. Classification and Multiple Use Act of 1964--Mining Claims: Lands Subject to

It is proper for BLM to declare a lode mining claim null and void ab initio if it was located on land segregated from mineral entry by a valid land classification at the time of location.

APPEARANCES: Mike and Sandra Sprunger, pro sese.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Mike and Sandra Sprunger have appealed from a July 18, 1990, decision of the Utah State Office, Bureau of Land Management (BLM), declaring the Topaz No. 1 through 3 lode mining claims (U MC 329599 through U MC 329601) null and void ab initio.

The Sprungers located the Topaz mining claims in the NE of sec. 17, T. 13 S., R. 11 W., Salt Lake Meridian, Juab County, Utah, on October 3 and 4, 1989. Their notices of location were filed with BLM for recordation pursuant to section 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1988), on December 11, 1989.

In its July 1990 decision, BLM declared the Topaz claims null and void ab initio because they had been located on land closed to mineral entry by a modification of classification notice No. 4342. 1/ As modified, notice No. 4342 provided that the E- of sec. 17 would be "segregate[d] * * *

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1/ This closure had been published in the Federal Register on Dec. 2, 1970. The initial notice, published on Mar. 28, 1968, at 33 FR 5110, was promulgated pursuant to the Act of Sept. 19, 1964, as amended, 43 U.S.C. §§ 1411-1418 (1970), and 43 CFR Group 2400 (1970).

from entry or location under the general mining laws (30 U.S.C. Ch. 2)." 35 FR 18336 (Dec. 2, 1970). The land was closed to mineral entry when the notice was published on December 2, 1970. The Sprungers appealed from the July 1990 BLM decision.

In their statement of reasons for appeal (SOR), the Sprungers challenge BLM's conclusion that their mining claims were invalid. They admit that the land was subject to classification notice No. 4342 when their claims were located in October 1989, but assert that their claims were located on land subject to two placer mining claims, i.e., the Topaz Queen Nos. 1 and 2 (U MC 59300 and U MC 59301) owned by Topaz Valley Minerals, Inc. (Topaz Valley) (SOR at 1). 2/ They explain that when they located their claims Topaz Valley's claims had "lapsed" under applicable State statutes because Topaz Valley had failed to file its proof of annual labor for the 1989 assessment year with the Juab County Recorder on October 1, 1989 (SOR at 1). The Sprungers argue that the existing segregation should not be considered an "intervening right" preventing their location of the claims because it would not be considered an "intervening right" precluding Topaz Valley's "relocation" of the lapsed Topaz Valley claims. Id. at 1, 2. They contend that to allow a relocation by Topaz Valley while barring others from locating claims would unfairly favor Topaz Valley over its competitors, and that BLM should permit the Sprungers to "relocate" the Topaz Queen claims as if there was a transfer of rights by inheritance, sale, or lease.

It is the stated policy of the Department that neither BLM nor this Board will become the forum for resolving private party disputes between rival claimants. 3/ See Sandra Memmott (On Reconsideration), 93 IBLA 113 (1986), and cases cited therein. For that reason we will not address the status of the Topaz Queen claims; i.e., whether those claims had "lapsed," making the land available for relocation by a rival claimant. Notwithstanding this policy, we find that the land was not open to mineral entry when the Sprungers located their claims.

The rights rival claimants may exercise against one another have no bearing on their respective rights against the United States. See, e.g., E.J. Belding, Jr., 109 IBLA 198, 205-06, 96 I.D. 272, 276 (1989). Therefore, the question of whether land becomes available for location by a rival claimant when a prior locator fails to maintain his claim has no bearing on whether the land should be considered open to any mineral entry, be it by location or relocation.

2/ A map attached to the Sprungers' SOR (Enclosure No. 3) shows a small portion of the Topaz No. 1 claim situated outside the Topaz Queen placers but within the withdrawn land.

3/ In a July 2, 1990, letter to Mike Sprunger, BLM explained that it is concerned with compliance with applicable Federal laws, but "it is not the policy of BLM to attempt to invalidate claims for alleged failure to comply with state statutes" (Enclosure No. 6 attached to SOR at 2).

The Sprunger appeal is based upon a misunderstanding of the effect of a withdrawal of land or reclassification. This misunderstanding is evident in their concern that, after classification, one relocating a mining claim is in a better position than one locating a mining claim. The land embraced by the Sprungers' claims was closed to location of mining claims by classification notice No. 4342. Thus, claims located following publication of that notice are properly deemed null and void from their inception because they were located when the land was closed to mineral entry. See Pluess-Staufer (California), Inc., 106 IBLA 198 (1988).

The Topaz Valley claims were located prior to the classification and, if valid, constituted valid existing rights at the time of classification. These rights would continue as long as the claims were maintained and remained valid. See Jack Stanley, 103 IBLA 392, 394 (1988), aff'd sub nom., Ptarmigan Co. v. United States, No. A88-467 (D. Alaska Mar. 30, 1990), appeal filed, No. 90-35369 (9th Cir. Apr. 29, 1990). The Sprungers assert that, following the December 1970 classification, Topaz Valley's claims "lapsed" and no longer represented a impediment to their location of a claim. We make no judgment regarding whether Topaz Valley's claims lapsed, but, assuming for the sake of illustration that they had, if the December 1970 classification had not precluded further mineral entry, the land previously subject to the Topaz Valley claims could be located by an adverse claimant under 30 U.S.C. § 28 (1988). See Knight v. Flat Top Mining Co., 305 P.2d 503, 505 (Utah 1957). However, the December 1970 classification precluded further mineral entry and, if the Topaz Valley claims lapsed, Topaz Valley's claims would be forfeited to the United States, and the 1970 land classification would preclude both relocation by Topaz Valley and location by a rival claimant. 4/ See Russell Hoffman v. BLM, 105 IBLA 238, 243 (1988); Mac A. Stevens (On Reconsideration), 85 IBLA 33, 34-35 (1985); United States v. Haskins, 59 IBLA 1, 101-03, 88 I.D. 925, 976 (1981), aff'd, Haskins v. Clark, No. CV-82-2112-CBM (C.D. Cal. Oct. 30, 1984).

BLM properly declared the Topaz Nos. 1 through 3 lode mining claims (U MC 329599 through U MC 329601) null and void ab initio because they had been located on land segregated from mineral entry at the time of location. See Patsy A. Brings, 119 IBLA 319, 330 (1991).

4/ The Sprungers may have confused relocation of a lapsed mining claim with amendment of an existing mining claim. Topaz Valley would be permitted to amend a valid claim following the classification, because the amendment would relate back to the original location. An amendment is not a relocation, which is equivalent to a new location. A relocation does not relate back to the original location. See Vernon F. Miller, 110 IBLA 20, 22 (1989). Simply stated, if the Topaz Valley claims are valid the Sprungers claims are not, and if Topaz Valley lost its claims neither Topaz Valley nor the Sprungers can locate new ones.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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R. W. Mullen
Administrative Judge

I concur:

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John H. Kelly
Administrative Judge